

REMARKS

Claims 1-5 and 18-32 are pending in the application. Claims 1-5 and 18-32 stand rejected. Claims 1-5 and 18-32 remain pending. For at least the reasons provided below, Applicant believes the application is in condition for allowance and respectfully requests reconsideration by the Examiner.

Nonstatutory Obviousness-Type Double Patenting

Claims 1-5 and 18-32 stand rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 3, 6, 8, and 9 of U.S. Patent No. 6,607,621. Applicant has submitted herewith a terminal disclaimer to obviate the double patenting rejection. This rejection is therefore believed to be overcome.

Rejections under 35 U.S.C. § 102(b)

Applicant thanks the Examiner for his careful consideration of the earlier submitted declarations and his withdrawal of the previously pending prior art rejections.

Claims 3-5, 21-25, 28 and 29 now stand rejected under 35 U.S.C. § 102(b) as possibly being anticipated by Applicant's admissions in Paragraph 7 of the Brower Declaration. Paragraph 7 of the Brower Declaration explained that "[i]n 1999 WRS (operating under the name 'Step Savers Products') began selling the Fast Patch, which was the first commercial embodiment of the invention disclosed in the '166 application." Applicant has submitted herewith a further Declaration by Mr. Brower clarifying that the date of first sale of the Fast Patch was "in or around September 1999."

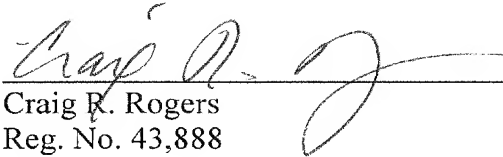
Contrary to the Examiner's position, Applicant believes that the December 13, 1999 provisional application provides adequate support for all of the limitations found in each of the claims of the present application. Nonetheless, this application is a divisional of non-provisional U.S. Patent Application Serial No. 09/595,635, and also has the benefit of its June 16, 2000 filing date. The '635 application was filed less than a year from the date of first sale of the Fast Patch and further provides support for each of the limitations found in each of the claims. The September 1999 sale of the Fast Patch wall patch therefore does not constitute an on-sale bar under 35 U.S.C. § 102(b). This application and each of its claims is therefore in condition for allowance.

Conclusion

For at least the foregoing reasons, reconsideration and allowance of claims 1-5 and 18-32 in the application as amended is requested. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

Respectfully submitted,

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